

**THE STATE OF THE JUDICIARY  
MAINE JUDICIAL BRANCH**

**A Report to the Joint Convention  
of the First Regular Session  
of the 124<sup>th</sup> Legislature**

**Presented by Chief Justice Leigh I. Saufley  
March 17, 2009**

***Providing Justice in Challenging Times***

Thank you, President Mitchell, and good morning, Governor Baldacci, Speaker Pingree, Members of the 124<sup>th</sup> Maine Legislature, Members of the Court, friends, and my always supportive family, it is an honor to present this report on the State of Maine's Judiciary.

I am also pleased to be joined here today by representatives of other courts: Judge Kermit Lipez of the U.S. First Circuit Court of Appeals; Probate Judge Donna Bailey; Penobscot Tribal Judge Eric Mehnert; and Steven Brimley with the Houlton Band of Maliseets.

Before I begin the actual report on the State of Maine's Judiciary, I want to recognize the historic significance of this occasion.

This is the first time that any Chief Justice in Maine has been invited to address the Joint Convention of the State Legislature by a female Senate President, and a female Speaker of the House, at a time when we can look into the gallery to the Attorney General, who is also a woman. This is an historic occasion for the State of Maine, and it is such an honor for me to be a part of this day. I want to ask Senate President Libby Mitchell, Speaker of the House Hannah Pingree, and Attorney General Janet Mills to stand so that we can celebrate this wonderful occasion.

On a decidedly lighter note, today is St. Patrick's Day. You will see that I am wearing the green. Now, to be sure, my ancestry is almost entirely Scottish and English. I was told, however, that on St. Patrick's Day *everyone is Irish*. I was told this, you must understand, by the Irish Trial Chiefs—Chief Justice Humphrey and Chief Judge Murray. Even Deputy Chief Judge LaVerdiere is Irish. So in the spirit of the day, let me present to you my other colleagues: Justice Robert O'Clifford, Justice Jon O'Levy, and Justice Ellen O'Gorman. To all of our Irish friends, to all of our non-Irish friends, here's a salute to St. Patrick, who, the Governor informs us, was Italian.

Now to the serious matters confronting us.

Recently, I was honored when the Governor nominated me to serve a second term as Chief Justice, and I am forever grateful for your confidence in confirming me. But I confess that I feel the responsibility of our work more acutely as we watch the good people of this State struggle with the most serious economic downturn we have experienced in decades. And I know, from spending just a little time in the halls of this building, that you, too, are feeling the extraordinary responsibility of government to the people who are hurting. Our friends and neighbors are losing their jobs, their homes, their businesses.

Last week, Judge John Romei called me from the Calais courthouse. He had just learned that the Woodland Mill in Baileyville would be closing. Judge Romei, like so many other judges in Maine, has spent years working with people in the Adult Drug Treatment Court, helping them to maintain sobriety, find jobs, and regain their families. As we talked, he asked me a simple question: what are they going to do? Across the State, those quiet conversations are being repeated. That question in government always evolves into another: what are *we* going to do to help?

Last Tuesday, Governor Baldacci gave us reasons to be hopeful about the future of Maine's economy. I am here today to tell you why, working together, with vigilance and creativity, we can be equally hopeful about the delivery of justice in the future, and why our vision of a justice system that is responsive to the needs of Maine people is both critical and achievable, even though the next two years will be very difficult.

### **ACCESS TO JUSTICE IS CRITICAL**

Justice is not simply an important part of government; it is critical to democracy. If justice fails, democracy fails. The very first words of the Constitution of the State of Maine recognize this fact: "We the people of Maine, in order to establish justice . . . ."

This concept is foundational to all three branches of government. Each branch, Executive, Legislative, and Judicial must be strong, independent, and capable of carrying out its responsibilities in order for democracy to survive. Make no mistake: democracy is a fragile thing. Coretta Scott King reminded us: "Democracy is never a final achievement. It is a call to an untiring effort."

That untiring effort occurs every day in these halls. As legislators, you work to assure that Maine laws reflect your vision of justice. When you are done with your work, the Executive Branch must be ready to effectuate the laws, and the Judicial Branch must be able to enforce them.

The economic development you and the Governor are working so hard to generate will require prompt resolution of the zoning, regulatory, and contractual disputes that inevitably arise during the process. Your efforts to protect children, defeat domestic violence, and reduce crime require a court system with the resources to carry out your vision of justice. We must, therefore, work together to assure that the Maine courts are there when our citizens need them.

## **PROVIDING ACCESS TO JUSTICE IN HARD ECONOMIC TIMES**

How then, in economically devastating times, do we assure the continued viability of justice in Maine? We must look ahead to better times, and we must have the roadmap toward prosperity in mind. We must be clear-eyed, however, about the current challenges. There are three principles that will guide us through these very challenging times:

- Priority cases involving children and families, violence or sexual assault, and victims of crimes will continue to be scheduled first.
- Second, we must make every effort to maintain our basic infrastructure, so that, as the economy recovers, and the sun rises on Maine again, we can rebuild a strong justice system quickly.
- Third, we must take this opportunity to think creatively about the delivery of justice. Innovations that improve efficiencies, and position the courts for effective streamlined delivery of justice in the future, will be crucial.

## **THE STATE OF THE JUDICIARY**

Keeping these principles in mind, I turn to the current state of Maine's Judiciary. I would describe it in one word: PRECARIOUS.

Much improvement has occurred in the last decade, and further improvements are in the works, but we are at a crossroads, and we must be vigilant if we are to emerge from the next two very challenging years with an intact system of justice.

Just a year ago, the State's system of justice was rebounding from years of under funding. Many efficiencies had already been undertaken: our centralized administration eliminated duplication of personnel and administrative costs; 22 of our 41 clerks' offices had been consolidated into 11 streamlined offices; library costs were substantially reduced through electronic research capacity and local publishing; out-of-state travel has been restricted, and in-state travel has been

reduced; video conferencing capacity was expanded throughout the state to save time and travel costs.

Accompanying those efficiencies, and with your help, we had made progress in several areas. Security had been substantially improved, the equipment was in place and you had authorized, but not yet funded, new positions to screen guns from the courthouses. A new consolidated courthouse was authorized to replace the outmoded and dangerous courts in Bangor. That environmentally responsible new courthouse will meet Maine Benchmark standards and will open on time and on budget. The Drug Treatment Courts had expanded into child protection cases, with an emphasis on reunifying families. The Business and Consumer Docket had been launched with very positive results.

Then the economy began its downward slide. Two problems combined to create the precarious circumstances now facing Maine citizens in need of justice. First, the State was unable to find new funds for the increased demand for constitutionally required services in criminal prosecution and child protection cases, and the money had to be taken from court operations. Second, across-the-board cuts further reduced the Judicial Branch budget. Last year, that combination resulted in the loss of approximately \$3 million from Judicial Branch operations and, given our previous efficiency efforts, left us with very few options.

The Judicial Branch does not have programs. We were, therefore, left with three stark options to manage that deficit: losing staff, closing courthouses, or violating the basic constitutional responsibility of the State in prosecutions.

Because, as jurists, we could not allow the Constitution to be violated, the end result had to be fewer courthouses or fewer staff.

Only the Legislature can close courthouses. We, therefore, reconvened the Courthouse Advisory Committee, with representatives from all three branches of

government, to consider whether courthouses should be closed to save money. After multiple meetings, that Committee unanimously recommended that we should not further reduce the public's access to courthouses, especially in these very tough times.

The need for rural courthouses becomes clear when we consider the substantial recent increase in homicides in Maine. The Attorney General's Office estimates that more than 60% of those recent deaths were related to domestic violence. It is already difficult for many people to reach a courthouse to obtain protection from abuse. If we close our few rural courthouses, we may leave victims of violence with no options. Although the future may bring many better options for distance justice through technology, until those systems are in place, closing rural courthouses will rarely be a wise choice.

You can see where this leads. If constitutionally required payments for the representation of poor people charged with crimes cannot be reduced, and if we are committed to providing access to justice in rural Maine, the only area left to cut is the number of people who are providing justice.

And that is what we have done. In the last year, we eliminated 9.5 positions, and we have had to maintain more than 40 vacancies, including the equivalent of two judges, and many marshals and clerks. These reductions have had a serious effect on our citizens.

- Public court hours have been reduced in six courthouses (the District Courts in York, Springvale, Portland, Biddeford, Belfast, and Bridgton, and the Superior Courts for Cumberland, Waldo, and York Counties);
- Both staff time and judge time in the Business and Consumer Docket have been cut in half;

- People seeking compensation for injuries or those trying to clear up zoning, contract, or land disputes, are waiting longer and longer for their day in court;
- Homeowners with nonpaying tenants cannot get their cases reached and may face foreclosure;
- Small businesses cannot get prompt resolution of their small claims cases; and
- Most distressing, courthouse safety has suffered. Last year, we were on our way to providing entry screening on 25% of the court days in Maine. This year, we have been able to staff that security need on only 5% of our court days.

The budget proposed for the next biennium results in approximately the same staffing shortages. We recognize and appreciate the Governor's efforts to spare Maine people an even greater loss of justice. But this current situation is—precarious. Only 462 people, including all of our judges, clerks, and marshals, are left to run an entire statewide court system that receives approximately 280,000 new cases each year.

And behind every court case is a disrupted life, from families in turmoil, or neighbors disputing boundaries or land use, to people injured in car accidents; from the relatively benign distress of receiving a speeding ticket, to the violent victimization by a professed loved ones; from small business owners struggling to obtain payment for their work, to victims of elder abuse or exploitation.

We hope that the shortage of people to provide justice is short-lived. But it is taking its toll already. Justice cannot be outsourced. People make the system work. Our staff is working harder every day under increasingly stressful conditions. We must look toward the day when we can re-staff the courts.

## HOW TO DELIVER JUSTICE

How then do we find a way to deliver justice when resources are so limited? We have been fortunate to have a great deal of collaboration with the Legislative and Executive Branches. Many of you have come to our courthouses and served on various committees to help us find creative solutions. The Judiciary Committee worked with us to review in detail the fiscal status of the courts and to make recommendations for improvements and innovation.

The public has also benefited from the generosity and assistance of Maine lawyers. Lawyers who work in Maine give of their time and their money for poor Mainers in need of assistance at unprecedented rates.

And despite the now-chronic staffing shortages, the men and women of the Maine courts have pulled together to keep the ship afloat. I cannot express fully my gratitude for the work that our judges, justices, and magistrates accomplish every day. And they could not accomplish what they do without the heart and soul of the system, the clerks, marshals, and administrators who keep the courts running.

It is because of the work of these fine people that we have continued to move forward in this last year, despite overwhelming demands.

- Through the efforts of Chief Justice Humphrey and Justice Nivison, we have been able to keep the Business and Consumer Docket alive;
- The consolidation of courthouses in Houlton and Bangor is almost complete. There will be two buildings where we once had to staff and secure four;
- Through the leadership of Justice Gorman, the creativity of talented trial judges, and the support of District Attorney Stephanie Anderson and the defense lawyers, we have launched the first of its kind Unified Criminal Docket to streamline the processing of criminal cases. Criminal charges are being addressed much more quickly, and we already have indications that the streamlined process will save substantial amounts of money;

- With the input and assistance of the Media and the Courts Committee, under the leadership of Justice Joe Jabar, we expanded camera access to Maine courtrooms, providing the public a greater opportunity to observe justice at work;
- To assure that the public can continue to place its trust and confidence in the legal professionals of this state, with the support of Maine lawyers, we have enacted a brand new lawyer code of conduct;
- Our staff held brainstorming sessions across the State to provide us with new ideas for efficiencies and cost savings, and many of their ideas are already in place;
- With everyone in the Judicial Branch pitching in, revenues from this Branch have not fallen, even in the face of the vacancies. The FY'08 revenue collection was 29% higher than 5 years ago, and the 2009 revenues are expected to reach almost \$50 million;
- Responding to Maine's growing diversity, we have improved our language interpreter services for the public, and we have created new responses to the growing ethnic and religious diversity in Maine's Courts. Rachel Talbot Ross, Director of the Portland Division of the NAACP, saw a problem in the way our criminal justice system was responding to issues of respect for religious attire. With Rachel's help, and assisted by Sheriff Mark Dion and Zack Heiden of the MCLU, the Courts and the Jails are changing their policies. These improvements are being accomplished without rancor or litigation, in contrast to the experiences in other states. It has been a terrific example of the way Maine works;
- This year, the Co-Occurring Disorders Court, which addresses the tragedies caused by the confluence of mental illness and substance abuse will, against all odds, expand into another county very shortly, using no new general fund dollars; and
- Overall, the Drug Treatment Courts have continued their extraordinary work, restoring lives, supporting sobriety, and, in the last year, helping seven more babies come into this world drug-free.

## **UPCOMING INITIATIVES**

As you can see, much has been accomplished in this very challenging time, and there is much more on the horizon.

### **1. Judicial Branch Initiatives & Collaboratives**

#### **(a) Foreclosure Diversion**

For example, within the month, through the tireless work of Justice Jon Levy, the Judicial Branch will establish a Task Force to create a Foreclosure Diversion program aimed at helping Maine people who are facing the loss of their homes. I am pleased to say that the Justice Action Group and Maine banks are working with us in this effort, giving us reason to hope for effective solutions.

#### **(b) Juvenile Justice Task Force**

Shortly, we will be convening a Juvenile Justice Task Force. This Task Force will represent a first-of-its-kind collaboration of the Judicial Branch, the Children's Cabinet, and the University of Maine School of Law. Working in a very short timeframe, we will launch a new era of coordination, and increased effectiveness and efficiency of early community response to children and families in crisis.

To be sure, Maine has made great strides in improving its youth-focused efforts. Great progress has been made with the state's juvenile correctional facilities. From a time when our Youth Center was frankly abysmal, to the recent national accreditation and recognition that Longcreek and Mountainview are among the best in the nation, we have come a long way. And the response to child abuse in Maine has also substantially improved. The number of Maine children in state custody has steadily dropped for the first time in decades, and the number of Maine children who are placed with family members has increased substantially.

But, despite all of these very important improvements, we still find too many of our youth are dropping out of high school, are disconnected from positive peers and communities, and are not coming out of adolescence with the skills necessary to become productive adults.

The Juvenile Justice Task Force will help us develop a coordinated process to identify youth and families in the beginning stages of distress. It should not matter whether the first identification of problems is by a school, the Department of Health and Human Services, the police, the courts, or other community entities; the response should be consistent, swift, and effective. We must use the growing body of evidence about “what works,” and find a way to coordinate available services, provide direction before our youth become disaffected, and keep them in, or return them to, school. One of the strongest predictors for joblessness, criminal behavior, and illness, is the disconnection from school and peers. It is estimated nationally that 68% of the prison population never finished high school. We do not want to be building new prisons and jail cells in the future, and we must turn our attention to this enormous challenge for Maine youth. The potential for real, lasting, and effective change through this effort is very exciting.

Once again, several of you have committed to helping us with these Task Forces, and we are grateful for your assistance.

## **2. Initiatives Requiring Legislative Approval**

In addition, there are three upcoming initiatives that will require your attention and have the potential for great improvements.

### **(a) Facilities**

First, thanks to Senate President Mitchell, there is a bill before you, L.D. 882, that will create a single, modernized, LEEDS certified courthouse for Augusta, which is long overdue. The court facilities in Augusta are cramped, disrespectful of

our citizens, and often dangerous. President Mitchell's bill would consolidate three different facilities under one roof, streamline the provision of security and technology, and provide a community justice center in the state's capital. Two other similar, though much smaller, projects will be proposed in Washington and Piscataquis Counties. These projects, which bring needed jobs, and create future efficiencies, could make a world of difference in each of their communities.

**(b) Indigent Legal Services Commission**

Next, does this sound familiar? "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford one, an attorney will be appointed to represent you at the State's expense." Hopefully, it sounds familiar only because you have watched too many episodes of Law and Order. But the quotes are not just drama. They are drawn directly from constitutional law established by the United States Supreme Court. The State *must* pay for attorneys to represent impoverished Mainers who are charged with crimes or are the subject of child abuse petitions.

The Indigent Legal Services Commission, Chaired by Justice Robert Clifford, will create an independent system for constitutionally required legal services connected to the prosecution of criminal and child protection cases. As you have heard, the budget for those services in Maine is oddly placed in the Judicial Branch. Having judges responsible for the payment of one party's attorney, and in no way involved in payment or decision-making regarding the other parties, creates the appearance of a conflict of interest that has become intolerable.

You would never think of putting the prosecutors, the District Attorneys and Attorneys General, within the Judicial Branch budget, and the defending attorneys do not belong there either. I cannot urge you strongly enough to support this

proposal, which will not require any new funding. We must eliminate this intolerable appearance of conflict.

**(c) Technology**

Third, we cannot move the court system forward without real technological solutions. For several years, I have been talking to you about the need for improved accessibility through technology. The current information management in the courts is expensive; cumbersome; costly for staffing, mailing, and storage; and frankly outmoded.

There is an opportunity this year, through grant funding, to completely update the court's technology. We are collaborating with Commissioner Ann Jordan in the Department of Public Safety and several other Executive Branch Departments to seek the necessary grant and stimulus funds for technological improvements. In addition to creating good, high tech, short-term jobs, this initiative will substantially upgrade the technological infrastructure of the court system and our criminal justice system, and it will improve efficiencies going forward.

Perhaps more important than any of the efficiencies or dollars saved in the long run would be the improvement in both the public's access to court-related matters, and the improvement in community safety that would be provided through enhanced criminal justice information systems.

Maine has led the way nationally with technology in schools. You have created wonderful on-line access to the Maine Legislature. We must do the same in the court system.

**What Can You Do to Assure that Justice is Meaningful for Your Constituents?**

Finally, I come to the question that so many of you have asked this year. Given the current General Fund deficit, and the prospect of further reductions, how

*can* you help us make sure that, when your constituents need help from the courts, there is a courthouse near them; there is a clerk who will answer the phone; there is a judge who can hear their case, and a marshal to keep them safe.

There are several concrete things you can do right now:

1. Support the Judicial Branch budget, as recommended by the Judiciary Committee, which worked hard to find solutions without requiring new general fund dollars. That budget is based on the recommendations of Governor Baldacci, and provides important management tools to help us to make the most of those dollars. Do not cut further into funding for justice.

2. Support President Mitchell's bill, L.D. 882, which will provide much-needed courthouse improvements, and which, like the other infrastructure projects you are reviewing, will generate local jobs and create efficiencies for the future.

3. Support the recommendations of Justice Clifford's Indigent Legal Services Commission. It will be sufficiently funded from current resources, will not require a single new dollar, and will restore confidence in our criminal justice system.

4. Support the grant funding proposals for the technology that will make the courts more accessible and efficient, and will improve community safety.

5. Keep an eye out for the pot of gold that could be waiting at the end of a rainbow. If there is any opportunity, help us return safety and staff to our courthouses.






Finally, I pledge to keep working with you and your communities. It was a wonderful experience for the Court to sit in Eastport, Winthrop, Bangor, Augusta, and Sanford last fall. Consider inviting us to bring Oral Arguments to a school near you. We have the schools lined up for this fall, and we are looking for suggestions for the fall of 2010.

In honor of the day, I leave you with this brief Irish Blessing that seems just perfect for those of us in Government.

May you have the Hindsight to know where you've been  
The Foresight to know where you're going  
And the Insight to know when you're going too far.

Happy St. Patrick's Day.

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## GUEST COLUMN

**'Justice delayed is justice denied'****Brett D. Baber**

Imagine the courthouse doors slamming shut. If current budget goals are imposed on the court system, a number of courthouses around the state may be closed for good. At those courthouses that survive, shortages of clerks and other staff will reduce the ability to resolve the variety of cases we expect courts to decide in the pursuit of justice.

The court system has been subject to numerous rounds of budget-cutting over the past decade. Maine's judicial budget — just 2 percent of the entire state budget without inclusion of indigent defense costs — has traditionally ranked at or near the bottom of all states in per capita funding.

The budget cycle for fiscal year 2009 has been especially severe. Faced with a \$190 million deficit in the general fund budget, the Maine judiciary was initially asked to cut its budget by \$4.8 million. The judiciary was able to avoid the full brunt of this request by implementing new fees on dispositive motions that were projected to raise an additional \$1 million in revenue. At the end of the day, the judiciary cut its budget by \$1.1 million for FY 2009 — and was required to pay \$1.9 million for cost overruns for court-appointed counsel, resulting in a \$3 million reduction for court operations.

As a result, the court system has left judicial and staff vacancies unfilled; it has terminated almost half of all court reporters; it has eliminated travel reimbursement for judges; it has reduced funding for the services of active retired justices; and it has reduced court operations. At the same time, the capacity of the business court has been reduced by half, and the judicial branch continues to defer security enhancements. And jurors continue to be reimbursed at the embarrassing rate of \$10 per day.

Budget projections for the 2009–11 biennium are even more bleak. Requests have already been made for further across-the-board budget cuts of about 4 percent. The governor's call for a reduction in income taxes portends even further spending reductions. And on Sept. 24, the governor told state department heads, including the judiciary, to look for ways to cut their budgets by an additional 10 percent because budget requests total \$654 million more than the state can afford. His commissioner of administrative and financial services asked for the lower proposals to be submitted by Oct. 10.

But civil justice as we know it in Maine will be drastically altered unless the governor and the Legislature provide more funding — not less — to their co-equal branch of government. The two major components of the judicial budget are courthouse operations and staff. Further cuts, or even flat funding in a period of inflation, will require the courts to close buildings, reduce staff and curtail civil services. Three or four courthouses are already targeted for closure unless the court system receives additional funding above 2009 levels. We may be faced with a beltway court system along the I-95 corridor if courts in rural areas of the state must be closed.

I urge you to consider the broader impact of an inadequate budget on the broader system of justice:

- Some activities currently regarded as criminal conduct might not get prosecuted;
- Defendants on bail may be at liberty for longer periods of time;
- Victims of abuse may not get protective orders on time;
- Child protective matters may be delayed;
- Divorces will take longer;
- Injured parties may have to go longer without payment of their medical bills and may face the consequences of an ongoing loss of income which will further pressure social service systems in the state; and
- Plaintiffs and defendants in civil cases will have matters pending for much longer stretches of time.

What can you do to help?

Please tell your legislative candidates that you are concerned about the need for full and adequate funding for the court system. Please tell them that Maine must fund justice. If you have recently been involved in any litigation, tell legislative candidates about your experience with the court system. Tell them how any further budget cutting will intolerably delay the resolution of very important legal disputes.

Let the candidates know that justice delayed is justice denied, and that they need to assure you they will work for proper funding of Maine's court system. Without it, we all face the steep erosion of our system of justice.

Brett D. Baber practices law in Bangor and is president of the Maine State Bar Association.



**JUDICIAL BRANCH  
INDIGENT LEGAL SERVICES COMMISSION**

**Type:** Commission, Tri-Branch  
**Established:** May 5, 2008  
**Chair:** Senior Associate Justice Robert W. Clifford  
**Report date:** November 14, 2008  
**Reports to:** Supreme Judicial Court  
**Completion Date:** June 30, 2009

**I. Commission Established**

The Judicial Branch Indigent Legal Services Commission is hereby established, in cooperation with the Executive and Legislative Branches, (1) to study how Maine currently provides legal representation to indigent citizens as required by the United States Constitution and the Constitution and laws of Maine, and (2) to identify ways to improve the availability of and support for constitutionally required legal services.

**II. Goal**

An indigent legal services system that makes quality legal representation available to Maine's indigent population from lawyers who receive adequate compensation, training, and support services based on a sustainable and responsible funding mechanism.

**III. Duties:**

The Commission will:

- A.** Review all aspects of the current court appointed counsel system within the Judicial Branch, including, but not limited to, (1) current methods for appointing lawyers to represent clients or act as guardians ad litem, (2) the compensation paid to court appointed attorneys, and (3) the mechanism currently in place to fund indigent legal services;

- B. Investigate and consider alternative methods of organizing and funding indigent legal services, giving consideration to both the experience of other states and to Maine's unique characteristics and legal culture;
- C. Consider the adequacy of current training and support services for court appointed counsel;
- D. Report its findings and recommend actions needed to improve the current system, including initiatives by stakeholders, reform of administrative procedures, and statutory changes.

#### **IV. Authority:**

The Commission may seek input, suggestions, and recommendations from individuals and groups within and outside the Judicial Branch. The Commission may invite consultants to its meetings as needed.

The Commission Chair may establish subgroups to study designated issues and report recommendations for consideration by the Commission as a whole.

There is no funding authorized for the work of the Commission.

#### **V. Membership:**

The membership in the Commission shall consist of members from the Executive, Legislative, and Judicial Branches of Maine State Government, as well as representatives of interested stakeholder organizations, individual attorneys, and others with valuable knowledge and experience to contribute. The specific names shall be listed in a separate membership roster, and membership may be changed or expanded as ordered by the Chief Justice.

#### **VI. Meetings:**

The Commission shall meet as often as is necessary to fulfill its responsibilities. The Chair shall schedule the meetings of the Commission.

**VII. Reporting:**

The Commission shall report its findings and recommendations to the Supreme Judicial Court on or before November 14, 2008.

**VIII. Commission Duration:**

Unless the Chief Justice extends this charter, the Commission will cease to exist on June 30, 2009.

Dated: May 12, 2008

Approved by:

/s

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Leigh I. Saufley  
Chief Justice,

**JUDICIAL BRANCH**  
**INDIGENT LEGAL SERVICES COMMISSION**  
**MEMBERSHIP ROSTER**  
**(updated 2/24/09)**

**Judicial Branch**

Hon. Robert W. Clifford, Senior Associate Justice (**Chair**)  
Hon. Arthur Brennan, Superior Court Justice  
Hon. Thomas E. Delahanty II, Superior Court Justice  
Hon. Peter Goranites, District Court Judge  
Hon. John David Kennedy, District Court Judge  
Tracie Adamson, Family Division Manager  
John Pelletier, Criminal Process Manager

**Executive Branch**

Karla Black, Deputy Legal Counsel, Governor's Office  
Denise Lord, Associate Commissioner, Department of Corrections  
William Stokes, Deputy Attorney General (Criminal Division Chief)  
Janice Stuver, Assistant Attorney General (Child Protection Division Chief)  
Geoffrey Rushlau, Maine Prosecutor's Association

**Legislative Branch**

Hon. William Diamond, Maine State Senate  
Hon. Stan Gerzofsky, Maine House of Representatives  
Hon. David Hastings, Maine State Senate  
Hon. Dawn Hill, Maine House of Representatives  
Hon. Barry Hobbins, Maine State Senate  
Hon. Deborah L. Simpson, Maine House of Representatives

**Stakeholder Representatives**

Brett Baber, Maine State Bar Association  
C. Donald Briggs, III, Maine Trial Lawyers Association  
Sharon Craig, MSBA Child Protection/Juvenile Justice Section  
Zach Heiden, Maine Civil Liberties Union  
Anthony J. Sineni III, Maine Association of Criminal Defense Attorneys  
Robert A. Moore, Business Community  
Robert Ruffner, Maine Indigent Defense Center

**Individual Members**

Sheila A. Cook, Esq. (Portland, Maine)  
Amy L. Fairfield, Esq. (Kennebunk, Maine)  
Bonnie S. Gould, Esq. (South Berwick, Maine)  
Margot Joly, Esq. (Wilton, Maine)  
Maurice R. Porter, Esq. (Norway, Maine)  
Ron Schneider, Esq. (Bernstein Shur Sawyer & Nelson)  
Christopher M. Northrop, Esq. (University of Maine school of Law)

**CONSULANT**

Deborah B. Carson, Director of Court Finance  
Laura M. O'Hanlon, Projects and Communications Counsel



**REPORT OF THE**  
**INDIGENT LEGAL SERVICES COMMISSION**

**FEBRUARY 2009**

## **BACKGROUND**

The United States Supreme Court has long held, pursuant to the U.S. Constitution, that all states must provide legal representation to the following types of parties if they cannot afford to hire their own attorney: (1) criminal defendants,<sup>1</sup> *Scott v. Illinois*, 440 U.S. 367 (1979); *Gideon v. Wainwright*, 372 U.S. 355 (1963); see also *State v. Cook*, 1998 ME 40, 706 A.2d 603; (2) juveniles charged with juvenile crimes, *In re Gault*, 73 U.S. 1 (1967); and (3) people with mental illness who are subject to involuntary commitment proceedings, *Vitek v. Jones*, 445 U.S. 480 (1979). In addition, although the federal Constitution does not mandate counsel at state expense in all termination of parental rights cases, *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18 (1981), the Supreme Court has stated that “informed opinion has clearly come to hold that an indigent parent is entitled to the assistance of appointed counsel not only in parental termination proceedings, but in dependency and neglect proceedings as well.” *Id.* at 33-34 (citations omitted). Consistent with this jurisprudence, Maine statutes also require the appointment of legal counsel to indigent parents in all child protection proceedings, 22 M.R.S. § 4005(2) (2008), and to indigent juveniles in emancipation proceedings, 15 M.R.S. § 3506-A (2008). Thus, Maine is bound by federal and state

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<sup>1</sup> In Maine, indigent defendants have a right to counsel pursuant to the State Constitution when imprisonment is imposed. Me. Const. art. I, § 6-A.

constitutional and statutory requirements to provide court-appointed counsel at state expense in a host of matters that come before the courts.

In the current Maine system, individual judges appoint counsel for indigent litigants on a case-by-case basis. The pool of appointed counsel is made up of private attorneys who have notified the court that they are willing to accept court appointments. Pursuant to an Administrative Order issued by the Supreme Judicial Court, JB-05-5 (as amended in July 2008), the State pays these lawyers at a rate of fifty dollars per hour, but that rate is subject to fee caps, the amount of which varies depending on the type of case. In assessing such fees, the court has discretion either to authorize fees in excess of the cap, or to reduce the amount of fees awarded to counsel, based on the quality of legal services rendered.

Although guidelines promulgated by the Supreme Judicial Court govern payment to attorneys appointed to represent indigent litigants, and although the performance of court-appointed attorneys is reviewed by justices and judges in the various court locations, Maine nevertheless lacks a statewide system for the training and selection of attorneys who provide court-appointed counsel services. Moreover, the Judicial Branch has received no resources to implement either

specific performance standards for court-appointed counsel, or a formal process to evaluate or supervise the work of court-appointed counsel on a statewide basis.<sup>2</sup>

The cost of providing constitutionally required counsel services is not subject to a specific appropriation, but is instead paid from the general Judicial Branch budget. Several months into the 2008 fiscal year (July 1, 2007, to June 30, 2008), the Judicial Branch recognized a substantial and accelerating increase over budget projections in the cost of payments to court-appointed counsel. This growing cost overrun had a serious impact on the Judicial Branch budget as a whole. Because the fundamental laws of our nation and our State mandate the provision of court-appointed counsel to certain indigent litigants, the only option available to the Judicial Branch to meet that obligation has been to transfer funds from areas within its budget intended for other essential judicial functions. This transfer of funds from the general budget of the Judiciary to pay court appointed fees seriously jeopardizes the Judicial Branch's ability to provide timely and efficient services across the entire spectrum of Maine's justice system.

To address this situation, Chief Justice Leigh I. Saufley announced to the Legislature, in her January 2008 State of the Judiciary address, that she would

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<sup>2</sup> This system of appointing individual attorneys exists in fifteen of Maine's sixteen counties. In Somerset County, the Supreme Judicial Court contracted with a group of attorneys to provide all of the court-appointed counsel services within the county. The contract contains minimal performance standards, and gives the court the authority to determine which lawyers are authorized to perform contract services.

bring together stakeholders from all three branches of government to form a commission tasked with (1) determining how Maine currently provides constitutionally-required counsel services, and (2) making recommendations to ensure quality legal representation to indigent litigants based on a sustainable funding mechanism. The Indigent Legal Services Commission was thus established by Chief Justice Saufley in May of 2008.<sup>3</sup> The Commission is comprised of representatives from the Judicial Branch, the Executive Branch, and the Legislative Branch, together with representatives from stakeholder organizations and other interested individuals.<sup>4</sup> The commission met on June 13, 2008; July 25, 2008; October 17, 2008; and January 23, 2009.

### **FINDINGS AND CONCLUSIONS**

The Commission began by reviewing the findings and recommendations of previous studies of Maine's indigent legal services system dating back to 1981.<sup>5</sup> The Judicial Branch has already implemented some recommendations from these various studies, such as standardizing the determination of indigency, and hiring

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<sup>3</sup> A copy of the Commission Charter and membership list is attached as Appendix 2.

<sup>4</sup> The Commission is comprised of volunteers, and has no budget and no full time staff. Nevertheless, the wealth of diverse experience and expertise possessed by the Commission's membership permitted an informed, albeit informal, assessment of the current state of indigent legal services in Maine.

<sup>5</sup> These studies include: Court-Appointed Attorney Procedures Working Group Memorandum (2003); An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings (2002); Report to the Supreme Judicial Court Regarding Court-Appointed Appellate Counsel (2002); Report of the Indigent Defense Committee (1998); Report of the Maine State Bar Association's Commission to Evaluate Maine's Court Appointment System (1986); Report of the Committee on Court-Appointed Counsel (Wathen Committee) (1982); and The Maine Private Defender Pilot Project (1980-1981).

financial screeners to assist judges with indigency determinations and to pursue reimbursement from the partially indigent. In addition, recommendations to increase the rate of pay for court-appointed counsel have been implemented, although not to the full extent of those recommendations. For example, a Maine State Bar Association Commission recommendation resulted in a rate increase from twenty dollars per hour to forty dollars per hour in 1987, but a 1998 recommendation by the Indigent Defense Committee to further increase the rate to sixty dollars per hour in order to keep pace with inflation resulted in a 1999 increase to only fifty dollars per hour. That rate remains unchanged.

Other recommendations contained in these studies have not been implemented, however. A 1986 recommendation to segregate the court-appointed counsel budget from the rest of the Judicial Branch budget has never been implemented. Other recommendations for the establishment of standards for the selection, training, and performance of court-appointed counsel have also not been implemented due to a lack of resources. Finally, there exists no established institution, separate from the Judicial Branch, to oversee the operation of the indigent legal services system and to advocate for measures needed to ensure the quality and efficiency of that system.

The Commission has also sought to analyze the cause of the recent increase in the cost of indigent legal services,<sup>6</sup> as evidenced in particular by the dramatic rise in the number of court-appointed counsel vouchers filed in the Superior Court. This surge has been caused, in great part, by the amendments to the criminal code and court rules, as well as by an increase in the percentage of parties who qualify as indigent. More particularly, various amendments to the criminal code have resulted in an increase in the number of former misdemeanor crimes that are now charged as felonies based on prior convictions or the presence of aggravating factors and are more likely to require the appointment of an attorney at State expense. Moreover, changes in the Maine Rules of Criminal Procedure have shifted initial proceedings in felony cases and motion hearings in many misdemeanor cases from the District Court to the Superior Court. Finally, fiscal year 2008 saw a nearly twenty percent increase in the proportion of Superior Court litigants who qualify for court-appointed counsel.

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<sup>6</sup> See Appendix 3. Since 1999, the average cost per voucher in the Superior Court has remained stable at approximately \$490 per voucher. In the District Court, the number and average cost per voucher have remained stable since 2002 at approximately 9600 vouchers per year at an average cost of \$250 per voucher.

The Commission agrees with and embraces the American Bar Association's *Ten Principles of a Public Defense Delivery System*<sup>7</sup> as its guide for effective reform. The first and foremost principle states: "The public defense function, including the selection, funding, and payment of defense counsel, is independent." The commentary to this principle correctly points out that "removing oversight from the judiciary ensures judicial independence from undue political pressure and is an important means of furthering the independence of public defense." The ABA recommends that: "to safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems." The Commission fully endorses this basic principle.

Maine's current indigent defense system is directly at odds with the ABA's first principle requiring the independence of the public defense function. Contrary

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<sup>7</sup> The ABA Ten Principles, with commentary, are attached hereto as Appendix 4. They were adopted by the ABA House of Delegates in February of 2002. The Ten Principles are:

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.
2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
5. Defense counsel's workload is controlled to permit the rendering of quality representation.
6. Defense counsel's ability, training, and experience match the complexity of the case.
7. The same attorney continuously represents the client until completion of the case.
8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
9. Defense counsel is provided with and required to attend continuing legal education.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

to the first principle, individual judges in Maine select and determine the appropriate compensation for court-appointed counsel in individual cases, and the Judicial Branch is responsible for allocating overall funding for indigent legal services. When the State brings a criminal charge, seeks to diminish or terminate parental rights, or pursues an involuntary commitment, the State is represented by counsel whose compensation and resources rely on budgets and resources independent from the Judicial Branch. Indigent litigants, on the other hand, must look to the court system, the same court system that has to resolve the dispute for which they are before the court, to fund their representation. This creates a basic inequity in our adversarial system of justice because one side to the case involving fundamental rights is dependent on the court, which must decide the dispute in a disinterested neutral fashion.

Moreover, in times of budget constraint, the appearance of a conflict of interest is created when judges handling these cases make decisions about the payment of counsel vouchers and the allocation of investigative and expert resources to indigent parties against the backdrop of pressures on the Judicial Branch budget. Although judges have been instructed to not consider budget issues when evaluating the need for indigent legal services, the appearance of a conflict can undermine the court's role as a neutral arbiter of the matters before it. Consistent with the ABA Principles, the delivery system for indigent legal services

in Maine should be reformed to eliminate the inequity between the parties, and the appearance of a conflict of interest inherent in the current system.

The Commission has also concluded that the current budget structure—in which cost increases for constitutionally required counsel necessitate substantial reductions in other parts of the Judicial Branch budget, thereby significantly constraining the Judicial Branch’s ability to fulfill its mission as a whole—should not continue. Funding constitutionally required indigent legal services is a distinct state obligation that should be met through a direct appropriation, rather than through budget-wide Judicial Branch cost-cutting measures that diminish the Judicial Branch’s ability to effectively provide justice to all of Maine’s citizens.

Finally, closer adherence to the ABA Principles, together with indigent defense standards in place throughout the nation, would result in improvements in the efficiency of the system and in the quality of the representation provided to Maine’s indigent citizens. The Ten Principles set forth additional characteristics of an adequate indigent legal services system that Maine currently lacks. These include mechanisms to ensure that: (1) appointed counsel receive regular training, (2) appointed counsel possess experience to match the complexity of the cases to which they are assigned, (3) caseloads are controlled to ensure that adequate time is available to permit quality representation in each case, and (4) the work of appointed counsel is supervised and systematically reviewed to ensure quality and

efficiency.<sup>8</sup> The Commission believes that closer adherence to these standards would most certainly improve the quality of representation for indigent litigants, and would also yield efficiencies through centralized management and oversight.

### **COMMISSION RECOMMENDATIONS**

The Commission recommends that Maine implement an indigent legal services system that is independent from the judiciary, and that provides the training and oversight necessary to ensure quality representation to Maine's citizens. Across the nation, in pursuit of these goals, forty-three states have established independent commission systems to oversee the delivery of indigent legal services.<sup>9</sup> The Commission concludes that such a system, tailored to Maine's circumstances, would address the deficiencies in Maine's current delivery system in the following ways:<sup>10</sup>

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<sup>8</sup> *ABA Ten Principles of a Public Defense Delivery System*, Principles 4, 6, 9 and 10. See also National Legal Aid & Defender Association, *Compendium of Standards for Indigent Defense Systems* (2000); *ABA Standards for Criminal Justice: Providing Defense Services* (3rd ed. 1992).

<sup>9</sup> The Spangenberg Group, *State Indigent Defense Commissions* (December 2006) (Prepared for the ABA Standing Committee on Legal Aid and Indigent Defendants). The report is attached as Appendix 5.

<sup>10</sup> To assist in the design of an independent commission system for indigent legal services in Maine, this Commission benefited greatly from the assistance of the Spangenberg Group, the nation's foremost experts on the delivery of indigent legal services around the country. The services of the Spangenberg Group have included presentations at two Commission meetings, technical support in the design of a system for Maine, and the drafting of implementing legislation. These services were funded through a grant from the ABA Standing Committee on Legal Aid and Indigent Defendants to the Maine Indigent Defense Center. The Commission wishes to thank Robert Spangenberg and David Newhouse of the Spangenberg Group; Georgia N. Vagenas, Esq., Chief Counsel, ABA Standing Committee on Legal Aid and Indigent Defendants; and Robert J. Ruffner, Esq., President, Maine Indigent Defense Center.

1. An independent commission to oversee the selection and payment of constitutionally required counsel would eliminate the inherent inequity and the appearance of the conflict of interest present in the current system;

2. An independently funded commission would alleviate the negative impact on the judicial branch budget and the judicial system as a whole caused by the higher-than-expected costs for constitutionally required counsel; and

3. An independent commission could implement uniform, statewide standards for the selection, training, and performance review of appointed counsel, while providing supervision and management to ensure that quality representation is uniformly provided in the most efficient manner possible.

The Commission recommends that an independent commission be established to oversee Maine's indigent defense system. The commission should have its own budget, and should promulgate standards for the selection, training, and performance of appointed and contract counsel. The commission should employ an executive director and be provided with sufficient staff to implement its policy standards, and to oversee the payment of attorneys. In the provision of legal services to indigent litigants, the State should continue to rely on a mixed system

consisting of individually-appointed counsel from the private bar, and contract counsel.

The Commission also believes that the new recommended system can and should operate within the existing resources expended on constitutionally required counsel. Accordingly, the Commission recommends that the financial and personnel resources currently utilized by the Judicial Branch to provide constitutionally required counsel services should be transferred from the Judicial Branch to the newly established independent commission. At the outset, the new system should retain the current rate of fifty dollars per hour for court-appointed counsel, and should continue to follow the case payment guidelines promulgated by the Supreme Judicial Court. The Commission believes that this transfer of resources and payment constraints will allow a transition to the new independent system that can be accomplished with no new or increased resources, an additional benefit in these difficult financial times.

Despite the difficult budget constraints Maine currently faces, the Commission is convinced that a timely reorganization of legal defense services is necessary and should not be delayed. Such services should no longer be allowed to imperil the timeliness and quality of justice provided to all of Maine's citizens by monopolizing the Judicial Branch budget. Judges should no longer decide the remuneration and resources available to only one side of the criminal justice

system. Finally, the attorneys providing indigent legal services should have the training, support, and supervision that are essential to quality and efficient legal representation.

### **RECOMMENDED LEGISLATION**

The Commission recommends establishment of an independent Maine Commission on Indigent Legal Services to oversee the delivery of legal representation to Maine's indigent population.<sup>11</sup> The independent commission should consist of five members appointed by the Governor and confirmed by the Senate. To ensure broad support for the independent commission's work, all three branches of government should participate in the selection of its members. Accordingly, one member should be selected from a list of potential appointees recommended by the President of the Senate, one from a list recommended by the Speaker of the House, and one from a list recommended by the Chief Justice of the Maine Supreme Judicial Court. Independent commission members should have a strong commitment to providing high-quality indigent legal services in the most efficient manner possible. No more than three members should be practicing attorneys.

In these financially sensitive times, the new independent commission should operate with the same resources currently expended by the Judicial Branch to

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<sup>11</sup> Proposed legislation to implement the Commission's recommendations is attached as Appendix 1.

provide indigent legal services. The funds and professional resources currently utilized by the Judicial Branch to administer and pay for indigent legal services should be transferred from the Judicial Branch budget to the that of the independent commission, whose centralized oversight and management should allow the new system to operate within these existing resources.

The independent commission should hire an executive director who is an attorney with experience in the provision of indigent legal services. Together with the executive director, the commission should establish standards for the selection, training, and performance of lawyers providing indigent legal services. The Commission should also establish procedures and systems to gather accurate data regarding the system's operation in order to manage caseloads and identify efficiencies. With this data, the independent commission should provide an annual report to the Legislature, the Executive Branch, and the Judicial Branch. Finally, the independent commission should submit biennial budget requests to fund its operations.

The executive director should establish an office and hire staff necessary to implement the standards and policies adopted by the commission. Based on these standards, the executive director will be able to determine who is qualified to represent indigent litigants as appointed or contract counsel. In addition, the executive director will provide training and support to lawyers, monitor their

performance and caseloads, and match attorney qualifications to case complexity. Finally, the executive director will develop a system for the payment of appointed and contract counsel that generates the detailed financial data necessary to identify efficiencies and implement cost savings.

### **CONCLUSION**

The Indigent Legal Services Commission has identified a national consensus that the provision of indigent legal services should be independent from the judiciary and subject to standards for the selection, training, and performance of the lawyers representing indigent clients. Establishment of the Maine Commission on Indigent Legal Services will create a more efficient system for providing indigent legal services, and will bring Maine into line with this national consensus and effectuate the constitutional right of Maine citizens to high-quality indigent legal services.

Respectfully submitted,

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Robert W. Clifford  
Associate Justice  
Chair, Indigent Legal Services Commission

LR #: 0461  
2/6/2009 7:53 AM

**Title: An Act to Establish the Maine Commission on Indigent Legal Services**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** under the United States Constitution and the Maine Constitution, an indigent person charged with a crime, facing loss of parental rights, or the risk of institutional commitment is entitled to counsel, and

**Whereas,** the state of Maine is obligated to ensure that such representation is provided and currently spends in excess of 10 million dollars per year;

**Whereas,** the demand for such services has increased because the number of child protective hearings requiring counsel has doubled, the number of cases with mandatory jail time has increased, and an increasing number of criminal defendants are indigent and entitled to such services;

**Whereas,** a central agency to coordinate such services has never been established, despite the increase in services;

**Whereas,** such representation is currently funded by an appropriation to the Judicial Branch of government;

**Whereas,** such representation is managed by approximately 60 judges located in 40 court locations throughout the state, who approve vouchers to private attorneys acting as indigent legal counsel and who are located throughout the state;

**Whereas,** the current method of paying for indigent legal services creates the appearance of a conflict of interest by placing judges in the position of ruling on compensation and reasonable effort and expenses for only one side in criminal, protective custody and involuntary commitment matters;

**Whereas,** there is at least the appearance of further conflict because judges are authorizing payment of indigent legal fees out of appropriations intended to fund Judicial Branch operations;

**Whereas**, the current system lacks a central authority to provide coordinated planning, oversight and management in order to ensure the delivery of quality legal representation in the most cost effective manner;

**Whereas**, it is necessary to provide independent oversight for the delivery of indigent counsel services, improve the quality of representation, insure the independence of counsel, establish uniform policies and procedures for the delivery of such services, and to develop the statistics necessary to evaluate the quality and the cost effectiveness of such services;

**Whereas**, the current method of funding indigent legal services through the Judicial Branch budget creates the appearance of a conflict of interest and is contrary to accepted practices;

**Whereas**, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 4 MRSA c. 37 is enacted to read:**

**CHAPTER 37**  
**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**§1801. Maine Commission on Indigent Legal Services; established**

The Maine Commission on Indigent Legal Services, established by Title 5, section 12004-G, subsection 25-A, is an independent commission whose purpose is to provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants and parents in child protective cases, consistent with federal and state constitutional and statutory obligations. The commission shall work to ensure the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State, and to ensure adequate funding of a statewide system of indigent legal services that is provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest.

**§1802. Definitions**

As used in this chapter, the following terms have the following meanings.

**1. Assigned counsel.** “Assigned counsel” means a private attorney designated by the court to provide indigent legal services at public expense.

**2. Commission.** “Commission” means the Maine Commission on Indigent Legal Services under section 1801.

**3. Contract counsel.** “Contract counsel” means a private attorney under contract with the commission to provide indigent legal services.

**4. Indigent legal services.** “Indigent legal services” means legal representation provided to:

**A.** An indigent defendant in a criminal case in which the United States Constitution or the Constitution of Maine or federal or state law require that the State provide representation;

**B.** An indigent party in a civil case in which the United States Constitution or the Constitution of Maine or federal or state law require that the State provide representation; and

**C.** Juvenile defendants.

“Indigent legal services” does not include the services of a guardian ad litem appointed pursuant to Title 22, section 4005, subsection 1.

### **§1803. Commission structure**

**1. Members; appointment; chair.** The commission consists of 5 members appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature. The Governor shall designate one member to serve as chair of the commission.

**A.** One of the members must be appointed from a list of qualified potential appointees provided by the President of the Senate;

**B.** One of the members must be appointed from a list of qualified potential appointees provided by the Speaker of the House of Representatives; and

**B.** One of the members must be appointed from a list of qualified potential appointees provided by the Chief Justice of the Supreme Judicial Court.

**2. Qualifications.** Individuals appointed to the commission must have a strong commitment to high-quality representation for persons who are indigent. No more than 3 members may be attorneys engaged in the active practice of law.

**3. Terms.** The members of the commission are appointed for terms of 3 years each, except that of those first appointed, the Governor shall designate 2 whose terms are

only one year, 2 whose terms are only 2 years, and one whose term is 3 years. A member may not serve more than 3 consecutive 3-year terms plus any initial term of less than 3 years.

A member of the commission appointed to fill a vacancy occurring otherwise than by expiration of term is appointed only for the unexpired term of the member succeeded.

**4. Quorum.** Three members of the commission constitute a quorum. A vacancy in the commission does not impair the power of the remaining members to exercise all the powers of the commission.

**5. Compensation.** Each member of the commission is eligible to be compensated as provided in Title 5, chapter 379.

#### **§1804. Commission responsibilities**

**1. Executive director.** The commission shall hire an executive director. The executive director must be an attorney licensed in this State with experience in the provision of indigent legal services.

**2. Standards.** The commission shall develop standards governing the delivery of indigent legal services, including:

A. Standards governing eligibility for indigent legal services;

B. Standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel;

C. Standards for assigned counsel and contract counsel case loads;

D. Standards for the evaluation of assigned counsel and contract counsel;

E. Standards for independent, competent and efficient representation of clients whose cases present conflicts of interest;

F. Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel; and

G. Other standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services.

**3. Duties.** The commission shall:

A. Develop and maintain a system that utilizes appointed private attorneys, contracts with individual attorneys or groups of attorneys, and any other program necessary to provide high-quality and efficient indigent legal services;

B. Develop and maintain an assigned counsel voucher review and payment authorization system;

C. Establish processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and case load management systems so that detailed expenditure and case load data is accurately collected, recorded and reported;

D. Develop criminal defense, child protective and involuntary commitment representation training and evaluation programs for attorneys throughout the state to ensure an adequate pool of qualified attorneys;

E. Establish minimum qualifications to ensure that attorneys are qualified and capable of providing adequate representation in the case types to which they are assigned;

F. Establish rates of compensation for assigned counsel;

G. Establish a method for accurately tracking and monitoring case loads of assigned counsel and contract counsel;

H. Submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system; and

I. Approve and submit a biennial budget request to the Department of Administrative and Financial Services, Office of the Budget, including supplemental budget requests as necessary.

**4. Powers. The commission may:**

A. Establish and maintain a principal office and other offices within the State as it considers necessary;

B. Meet and conduct business at any place within the State;

C. Use voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed;

D. Adopt rules to carry out this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; and

E. Appear in court and before other administrative bodies represented by its own attorneys.

#### **§1805. Executive director**

The executive director of the commission hired pursuant to section 1804, subsection 1, shall:

**1. Compliance with standards.** Ensure that the provision of indigent legal services complies with all constitutional, statutory and ethical standards;

**2. Development of standards.** Assist the commission in developing standards for the delivery of adequate indigent legal services;

**3. Delivery and supervision.** Administer and coordinate delivery of indigent legal services and supervise compliance with commission standards;

**4. Most effective method of delivery.** Recommend to the commission the most effective method of the delivery of indigent legal services in furtherance of the commission's purposes;

**5. Training.** Provide for regular training programs for counsel providing indigent legal services;

**6. Personnel.** Subject to policies and procedures established by the commission, hire professional, technical and support personnel, including attorneys, considered reasonably necessary for the efficient delivery of indigent defense services;

**7. Submissions to commission.** Prepare and submit to the commission:

**A.** A proposed biennial budget for the provision of indigent legal services, including supplemental budget requests as necessary;

**B.** An annual report containing pertinent data on the operation, needs and costs of the indigent legal services system; and

**C.** Any other information as the commission may require;

**8. Develop and implement.** Coordinate the development and implementation of rules, policies, procedures, regulations and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards;

**9. Records.** Maintain proper records of all financial transactions related to the operation of the commission;

**11. Other funds.** Apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit or private grants, gifts or bequests;

**12. Meetings of commission.** Attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the executive director; and

**14. Other assigned duties.** Perform other duties as the commission may assign.

**Sec. 2. 5 MRSA §12004-G, sub-§25-A is enacted to read:**

**25-A. Legal services.**

<u>Legal Services</u>	<u>Maine Commission</u>	<u>Legislative Per</u>	<u>4 MRSA §1801</u>
	<u>on Indigent Legal</u>	<u>Diem and</u>	
	<u>Services</u>	<u>Expenses</u>	

**Sec. 3. Transfer of personnel and funds.** Funds necessary to staff the commission and carry out this Act must be transferred from the Judicial Department's General Fund Personal Services and All Other accounts to the Maine Commission on Indigent Legal Services. Positions necessary to carry out the provisions of this Act must be transferred from the Judicial Department to the Maine Commission on Indigent Legal Services.

**Sec. 4. Transition.** The Maine Commission on Indigent Legal Services and the Judicial Department shall develop a process to provide for the transition from the existing voucher payment system to the payment system developed by the commission.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

## **SUMMARY**

This bill establishes the Maine Commission on Indigent Legal Services, an independent and permanent statutory entity, to provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants and parents in child protective cases, consistent with federal and state constitutional and statutory obligations. The commission will not oversee the provision of guardian ad litem services.

The commission consists of 5 members appointed by the Governor and confirmed by the Senate. Two must be appointed from suggestions made by the President of the

Senate and the Speaker of the House of Representatives and one must be appointed from suggestions made by the Chief Justice of the Supreme Judicial Court. The Governor shall select the chair. After the initial staggered terms, members serve for 3-year terms. Individuals appointed to the commission must have a strong commitment to high-quality representation of person who is indigent. Compensation is limited to the legislative per diem and expenses.

The commission will develop standards for the delivery of indigent legal services and will establish maintain a system that utilizes appointed private attorneys, contracts with individual attorneys or groups of attorneys, and any other program necessary to provide high-quality and efficient indigent legal services. The commission shall appoint an executive director to carry out the day to day activities of the commission. All attorneys providing indigent legal services will be paid through the commission.

This bill also authorizes a one-time transfer of all necessary funds from the Judicial Branch to the Maine Indigent Legal Services Commission in order to create the Commission at no additional cost to the General Fund.

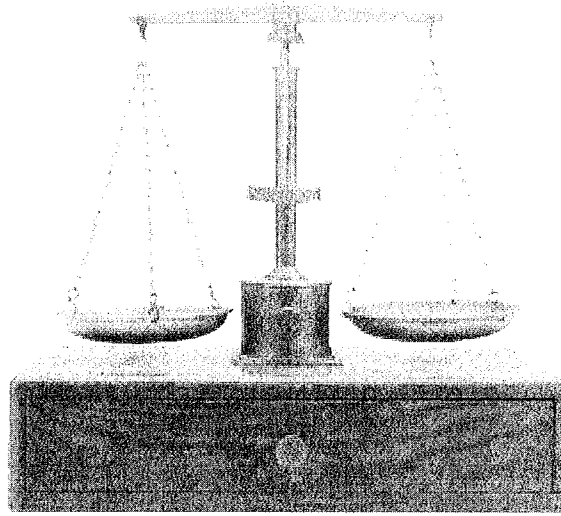
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**ABA**

**TEN**

**PRINCIPLES**

**OF A PUBLIC DEFENSE DELIVERY SYSTEM**



*February 2002*

ABA STANDING COMMITTEE  
ON LEGAL AID AND INDIGENT DEFENDANTS

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2001 - 2002

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# TEN PRINCIPLES

## OF A PUBLIC DEFENSE DELIVERY SYSTEM

*February 2002*

Approved by American Bar Association House of Delegates, February 2002. The American Bar Association recommends that jurisdictions use these Principles to assess promptly the needs of public defense delivery systems and clearly communicate those needs to policy makers.

## INTRODUCTION

The *ABA Ten Principles of a Public Defense Delivery System* were sponsored by the ABA Standing Committee on Legal and Indigent Defendants and approved by the ABA House of Delegates in February 2002. The Principles were created as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney. The more extensive ABA policy statement dealing with indigent defense services is contained within the ABA Standards for Criminal Justice, *Providing Defense Services* (3d ed. 1992), which can be viewed on-line (black letter only) and purchased (black letter with commentary) by accessing the ABA Criminal Justice Section homepage at <http://www.abanet.org/crimjust/home.html>.

## ACKNOWLEDGMENTS

The Standing Committee on Legal Aid and Indigent Defendants is grateful to everyone assisting in the development of the *ABA Ten Principles of a Public Defense Delivery System*. Foremost, the Standing Committee acknowledges former member James R. Neuhard, Director of the Michigan State Appellate Defender Office, who was the first to recognize the need for clear and concise guidance on how to design an effective system for providing public defense services. In 2000, Mr. Neuhard and Scott Wallace, Director of Defender Legal Services for the National Legal Aid and Defender Association, jointly produced a paper entitled "The Ten Commandments of Public Defense Delivery Systems," which was later included in the Introduction to Volume I of the U.S. Department of Justice's Compendium of Standards for Indigent Defense Systems. The *ABA Ten Principles of a Public Defense Delivery System* are based on this work of Mr. Neuhard and Mr. Wallace.

Special thanks go to the members of the Standing Committee and its Indigent Defense Advisory Group who reviewed drafts and provided comment. Further, the Standing Committee is grateful to the ABA entities that provided invaluable support for these Principles by co-sponsoring them in the House of Delegates, including: Criminal Justice Section, Government and Public Sector Lawyers Division, Steering Committee on the Unmet Legal Needs of Children, Commission on Racial and Ethnic Diversity in the Profession, Standing Committee on Pro Bono and Public Services. We would also like to thank the ABA Commission on Homelessness and Poverty and the ABA Juvenile Justice Center for their support.

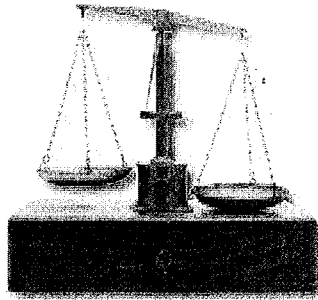
L. Jonathan Ross  
Chair, Standing Committee on  
Legal Aid and Indigent Defendants

# ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

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## *Black Letter*

- 1 The public defense function, including the selection, funding, and payment of defense counsel, is independent.
- 2 Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
- 3 Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
- 4 Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
- 5 Defense counsel's workload is controlled to permit the rendering of quality representation.
- 6 Defense counsel's ability, training, and experience match the complexity of the case.
- 7 The same attorney continuously represents the client until completion of the case.
- 8 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
- 9 Defense counsel is provided with and required to attend continuing legal education.
- 10 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.



# ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

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*With Commentary*

**1** The public defense function, including the selection, funding, and payment of defense counsel,<sup>1</sup> is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.<sup>2</sup> To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.<sup>3</sup> Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.<sup>4</sup> The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.<sup>5</sup>

**2** Where the caseload is sufficiently high,<sup>6</sup> the public defense delivery system consists of both a defender office<sup>7</sup> and the active participation of the private bar. The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services.<sup>8</sup> The appointment process should never be *ad hoc*,<sup>9</sup> but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.<sup>10</sup> Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.<sup>11</sup>

**3** Clients are screened for eligibility,<sup>12</sup> and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention, or request,<sup>13</sup> and usually within 24 hours thereafter.<sup>14</sup>

**4** Defense counsel is provided sufficient time and a confidential space within which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.<sup>15</sup> Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client.<sup>16</sup> To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.<sup>17</sup>

**5** Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.<sup>18</sup> National caseload standards should in no event be exceeded,<sup>19</sup> but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.<sup>20</sup>

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**6** Defense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.<sup>21</sup>

**7** The same attorney continuously represents the client until completion of the case. Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.<sup>22</sup> The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

**8** There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.<sup>23</sup> Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.<sup>24</sup> Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess,

unusual, or complex cases,<sup>25</sup> and separately fund expert, investigative, and other litigation support services.<sup>26</sup> No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.<sup>27</sup> This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

**9** Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.<sup>28</sup>

**10** Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.<sup>29</sup>

# NOTES

<sup>1</sup> "Counsel" as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney, or an attorney in private practice accepting appointments. "Defense" as used herein relates to both the juvenile and adult public defense systems.

<sup>2</sup> National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter "NAC"], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter "NSC"], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3<sup>rd</sup> ed. 1992) [hereinafter "ABA"], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter "Assigned Counsel"], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter "Contracting"], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter "Model Act"], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter "ABA Counsel for Private Parties"], Standard 2.1(D).

<sup>3</sup> NSC, *supra* note 2, Guidelines 2.10-2.13; ABA, *supra* note 2, Standard 5-1.3(b); Assigned Counsel, *supra* note 2, Standards 3.2.1, 2; Contracting, *supra* note 2, Guidelines II-1, II-3, IV-2; Institute for Judicial Administration/ American Bar Association, *Juvenile Justice Standards Relating to Monitoring* (1979) [hereinafter "ABA Monitoring"], Standard 3.2.

<sup>2</sup> Judicial independence is "the most essential character of a free society" (American Bar Association Standing Committee on Judicial Independence, 1997).

<sup>5</sup> ABA, *supra* note 2, Standard 5-4.1

<sup>6</sup> "Sufficiently high" is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase generally can be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases are enough to support meaningful involvement of the private bar.

<sup>7</sup> NAC, *supra* note 2, Standard 13.5; ABA, *supra* note 2, Standard 5-1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2. "Defender office" means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

<sup>8</sup> ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

<sup>9</sup> NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

<sup>10</sup> ABA, *supra* note 2, Standard 5-2.1 and commentary; Assigned Counsel, *supra* note 2, Standard 3.3.1 and commentary n.5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct).

<sup>11</sup> NSC, *supra* note 2, Guideline 2.4; Model Act, *supra* note 2, § 10; ABA, *supra* note 2, Standard 5-1.2(c); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state).

<sup>12</sup> For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

<sup>13</sup> NAC, *supra* note 2, Standard 13.3; ABA, *supra* note 2, Standard 5-6.1; Model Act, *supra* note 2, § 3; NSC, *supra* note 2, Guidelines 1.2-1.4; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(A).

<sup>14</sup> NSC, *supra* note 2, Guideline 1.3.

<sup>15</sup> American Bar Association Standards for Criminal Justice, *Defense Function* (3<sup>rd</sup> ed. 1993) [hereinafter "ABA Defense Function"], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter "Performance Guidelines"], Guidelines 2.1-4.1; ABA Counsel for Private Parties, *supra* note 2, Standard 4.2.

<sup>16</sup> NSC, *supra* note 2, Guideline 5.10; ABA Defense Function, *supra* note 15, Standards 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

<sup>17</sup> ABA Defense Function, *supra* note 15, Standard 4-3.1.

<sup>18</sup> NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1, 4.1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2(B)(iv).

<sup>19</sup> Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should “reflect” (NSC Guideline 5.1) or “under no circumstances exceed” (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare, and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). See also ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter “Death Penalty”].

<sup>20</sup> ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter “Appellate”], Standard 1-F.

<sup>21</sup> Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

<sup>22</sup> NSC, *supra* note 2, Guidelines 5.11, 5.12; ABA, *supra* note 2, Standard 5-6.2; NAC, *supra* note 2, Standard 13.1; Assigned Counsel, *supra* note 2, Standard 2.6; Contracting, *supra* note 2, Guidelines

III-12, III-23; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4(B)(i).

<sup>23</sup> NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (*Performance*); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(B)(iv). See NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g.: there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). Cf. NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

<sup>24</sup> ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

<sup>25</sup> NSC, *supra* note 2, Guideline 2.6; ABA, *supra* note 2, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, *supra* note 2, Guidelines III-6, III-12, and *passim*.

<sup>26</sup> ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

<sup>27</sup> ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

<sup>28</sup> NAC, *supra* note 2, Standards 13.15, 13.16; NSC, *supra* note 2, Guidelines 2.4(4), 5.6-5.8; ABA, *supra* note 2, Standards 5-1.5; Model Act, *supra* note 2, § 10(e); Contracting, *supra* note 2, Guideline III-17; Assigned Counsel, *supra* note 2, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; NLADA *Defender Training and Development Standards* (1997); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(A).

<sup>29</sup> NSC, *supra* note 2, Guidelines 5.4, 5.5; Contracting, *supra* note 2, Guidelines III-16; Assigned Counsel, *supra* note 2, Standard 4.4; ABA Counsel for Private Parties, *supra* note 2, Standards 2.1 (A), 2.2; ABA Monitoring, *supra* note 3, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.



## Legal defense of poor focus of new state panel

BY TREVOR MAXWELL

Maine Sunday Telegram

KENNEBEC JOURNAL (Hannan, Scotland)

10/04/2009

Half-joking, friends and colleagues of Ron Schneider Jr. have offered him condolences lately. Schneider, a lawyer at Bernstein Shur in Portland, has been tapped as chair of a newly created state commission that will oversee legal defense for the poor. That essential job has historically been handled within the judicial branch.

The Maine Commission on Indigent Legal Defense was created because of a number of problems and conflicts of interest within the old system. The commission has less than a year to prepare before it takes over a roughly \$10 million budget from the judicial branch next July.

"Maine is basically the last state to have some type of independent agency to fulfill this role," Schneider said. "This is an enormous step forward."

His colleagues rib him because they think his new task seems like a pretty tall order: Create a system that ensures all poor defendants receive quality representation — as guaranteed by the state and U.S. constitutions — at a cost that is palatable to the cash-starved Legislature.

"The message from the Judicial Committee is loud and clear: There isn't a whole lot of money," Schneider said.

Despite the size of the challenge, however, Schneider is fired up. He has been focused on this area of law since his law school days, and he jumped at the chance to serve on the five-member commission, which has just advertised on job boards nationwide, seeking its first executive director.

"I'm ecstatic," said Schneider, who lives in Wells.

"I think we're assisted by the fact that we're going to be able to take ideas from other jurisdictions ... and apply them to Maine," he said.

The latest state to develop a similar commission was North Dakota in 2005.

In Maine, if a defendant is found to be indigent by a financial screener or a judge, he or she can apply for a court-appointed attorney. Those lawyers are paid \$50 an hour. The total costs per case are capped on a sliding scale, depending on the type of case.

The state also pays for lawyers for juvenile defendants and parties involved in child custody disputes.

Court-appointed lawyers submitted 25,219 vouchers in the fiscal year that ended June 30, up from 24,410 a year earlier. The overall budget for indigent legal defense last year was \$9.65 million, according to recently revised state statistics.

### Delayed payments fuel crisis

The rising costs of legal defense for the poor over the past decade — attributable largely to new laws added to Maine's criminal code, more arrests and more charges brought by prosecutors — have contributed to the judicial branch's budget crisis.

Last summer, the state delayed payments owed to lawyers because there was no money to send out.

That is one of the reasons the Commission on Indigent Legal Services was created, to separate out the budget for services that are required by the U.S. Constitution.

There are other reasons, as well. Under the old system, judges have decided whether court-appointed lawyers could receive extra money above the caps, for services such as expert witnesses or private investigators.

Legal experts said it was unfair for judges to dictate defense spending without having any say in what prosecutors spent.

"You shouldn't have judges reviewing the legal fees of one side," judicial branch spokeswoman Mary Ann Lynch said in an interview earlier this year.

### Panel to make spending decisions

In addition, the money for indigent legal services has come from the same pool of money that funds judicial salaries, creating an inherent conflict of interest.

Maine also lacked a central authority to coordinate the appointments and payment system for lawyers.

That has been done by the clerks and judges at each of the state's 40 courthouses. A study group noted all of

those problems and more when it recommended the creation of the independent commission. The group, led by retiring state Supreme Court Justice Robert Clifford, studied the issue for 10 months before issuing its report in March.

Schneider, who served on the study group, said judges probably will still be involved in the initial appointment of lawyers, but the commission will take over all decisions on spending. The commission intends to set up a computerized system for processing vouchers and disbursing payments; Schneider hopes the system will be ready for a test run in March.

#### Training appointed lawyers

Candidates for the executive director position have until Nov. 1 to submit an application to the commission. After a director is hired, the commission hopes to add an administrative assistant, an accountant and a legal director. All of this must be done within the existing budget that will be transferred from the judicial branch to the commission next July 1.




One of the commission's top goals is to coordinate training and other educational opportunities for lawyers who take court appointments.

Kimberly Moody, executive director of the Disability Rights Center in Augusta, is one of the commissioners.

She wants to make sure that appointed lawyers understand how to best represent individuals who face involuntary commitment. Like criminal defendants, they qualify for state-funded attorneys.

"When you get committed based on a mental illness or perceived mental illness, that is on your record forever," Moody said. "You want to make sure that you have adequate representation."

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## Indigent Legal Services Reform Becomes Law

**by** Ruffner Robert  
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Portland Office

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September 29, 2009

Previously published by Maine State Bar Association on Summer 2009

On July 13, I was fortunate to be present when Governor Baldacci signed LD 1132, establishing the Maine Commission on Indigent Legal Services—a good first step on a long road to reform.

Based on the recommendations of the Indigent Legal Services Commission chaired by Justice Robert Clifford, the independent Maine Commission on Indigent Legal Services will have its own budget and will be responsible for appointment and payment of attorneys for the indigent in criminal, juvenile, mental health and child protective cases.

Taking over that function from the Judicial Branch, the new commission will end a decades-old conflict of interest inherent in the current system. Equally as important, for the first time ever, someone is responsible for the quality and performance of appointed counsel.

Maine, like all other states, is constitutionally obligated to provide attorneys to indigent criminal defendants in felony and misdemeanor cases where there is a possibility of jail, to juveniles charged with crimes, and to the mentally ill in involuntary commitment proceedings. Maine is also required by statute to provide attorneys to parents in child protection proceedings.

Historically, Maine has met its obligations through a "system" of court appointments. In qualifying cases, the court would appoint attorneys to individuals after a financial screening process. To get on the court-appointed list, lawyers would notify the court of their desire to accept court-appointed cases. There were no formal experience or training requirements. At the end of a case, appointed attorneys would submit a voucher to the court, usually the presiding judge or justice for that case, who would determine what compensation would be paid.

Almost all other states have already moved away from such systems, which inherently create a conflict because of the judicial involvement in the selection and compensation of the attorneys in the cases before those same judges.

Maine's system created an additional conflict: the payment of court appointed attorneys came out of the Judicial Branch's own operating budget. So, as case-loads increased and budgets tightened, the judiciary did not have enough funds to operate the court system. This contributed to staff shortages and reduction in hours of operation.

The system also lacked resources for training or supervision of appointed counsel. Efforts to implement qualifications to be on the court-appointed list and efforts to require additional experience and training for serious cases, such as homicide, or specialized areas such as juvenile or child protective cases, were also derailed by a lack of resources.

As a result of the lack of standards and training, the list of lawyers reflected a spectrum of quality, from committed career defense lawyers and energized new lawyers to the inexperienced and the incompetent. As one commentator on Maine's system noted, "[w]hile a defendant could get the best lawyer in the state, he could also get the worst" (Comments: A Measure Of Our Justice System: A Look At Maine's Indigent Criminal Defense Delivery System, 48 Me. L. Rev. 335 n311; 1996).

To address these conflict of interest and quality concerns, Chief Justice Saulfley launched the Indigent Legal Services Commission. Its goal: create an "indigent legal services system that makes quality legal representation available to Maine's indigent population from lawyers who receive adequate compensation, training, and support services based on a sustainable and responsible funding mechanism."

In March, the ILSC reported the deficiencies in the existing system and made recommendations which formed the basis of LD 1132.

The ILSC applied the American Bar Association's "Ten Principles of a Public Defense Delivery System" to the court-appointed system, and found it directly at odds with the ABA's first principle: that the delivery of indigent legal services should be independent of the judiciary.

In Maine, the selection and compensation of court-appointed attorneys, as well as the overall funding, were all the direct responsibility of the Judicial Branch. In our adversarial system of justice, this drag on the judiciary's independence created "a basic inequity" by hampering the courts' role as a neutral decision maker.

The ILSC also found that the system failed to ensure that participating lawyers receive regular necessary training, and failed to match the experience of the attorney to complexity of the case. Additionally, the ILSC found that there was no method of monitoring the workload of a given lawyer. Finally, the ILSC found that our system lacked any form of supervision or systematic review to ensure quality legal representation.

Now, with the resulting enactment of LD 1132, Maine will soon have a commission of five people, appointed by the governor, with a demonstrated "commitment to quality representation for persons who are indigent." He recently nominated these candidates: Marvin Glazier of Bangor, Kimberly Moody of Poland, Ronald Schneider Jr. of Wells, Kenneth Spirer of Portland and Sally Sutton of South Portland.

One of the commission's main duties will be the day-to-day operation of an indigent defense delivery system. In order to take over this function by next July 1, the commissioners will hire an executive director and a small staff, primarily to manage the assignment of counsel and the processing of vouchers. Moving the responsibility for the selection, appointment and payment of counsel to an independent commission avoids the conflict of interest that exists in a court-run system.

Perhaps the greatest benefit of the commission will be its ability to improve the overall quality of indigent legal services. Previously, if you had a bar license and a pulse, you can be on the court-appointed list. In fact, you could take all your CLEs in bankruptcy, or some other worthy but unrelated specialty, and be on the list. The commission is required to develop standards that address this problem.

Specifically, the commission will develop minimum experience and training requirements for all assigned counsel, as well as additional requirements for certain specific case types, such as homicide or juvenile cases. To ensure that people are actually receiving quality legal representation, the commission will also develop standards for the evaluation of assigned counsel. However, just developing these standards will not make a difference if they are not followed. Fortunately, the law makes it clear: the system that the commission runs must implement policies and

procedures which ensure that these standards are met.

There are many other potential benefits. Some states, such as Montana, have been able to negotiate low-cost contracts for legal research and other support services for their assigned counsel. As in the federal assigned-counsel system, resource counsel can be made available to answer questions for assigned counsel on a regional basis, improving quality and efficiency. The development of significant additional training opportunities can improve the quality of the bar as a whole. The commission will have the authority to study alternative methods of delivering quality indigent legal services. Finally, a strong commission can be a partner in collaborative efforts to improve the quality and efficiency of our justice system.

The creation of the Maine Commission on Indigent Legal Services is a good first step in improving the delivery indigent legal services in our state. As members of the Bar we should all look for ways to assist the Commission as it works to develop this new system for Maine.

*Robert J. Ruffner is the director of the Portland-based Maine Indigent Defense Center.*

The views expressed in this document are solely the views of the author and not Martindale-Hubbell. This document is intended for informational purposes only and is not legal advice or a substitute for consultation with a licensed legal professional in a particular case or circumstance.

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## Maine Revised Statutes Annotated Currentness

## Title 4. Judiciary

## Chapter 37. Maine Commission on Indigent Legal Services (Refs &amp; Annos)

## → § 1801. Maine Commission on Indigent Legal Services; established

The Maine Commission on Indigent Legal Services, established by Title 5, section 12004-G, subsection 25-A, is an independent commission whose purpose is to provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations. The commission shall work to ensure the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State and to ensure adequate funding of a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest.

## CREDIT(S)

4 M. R. S. A. § 1801, ME ST T. 4 § 1801

Current with legislation through the 2009 First Regular Session of the 124th Legislature

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## Maine Revised Statutes Annotated Currentness

## Title 4. Judiciary

## Chapter 37. Maine Commission on Indigent Legal Services (Refs &amp; Annos)

## → § 1802. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Assigned counsel.** “Assigned counsel” means a private attorney designated by the commission to provide indigent legal services at public expense.

**2. Commission.** “Commission” means the Maine Commission on Indigent Legal Services under section 1801.

**3. Contract counsel.** “Contract counsel” means a private attorney under contract with the commission to provide indigent legal services.

**4. Indigent legal services.** “Indigent legal services” means legal representation provided to:

**A.** An indigent defendant in a criminal case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation;

**B.** An indigent party in a civil case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation; and

**C.** Juvenile defendants.

“Indigent legal services” does not include the services of a guardian ad litem appointed pursuant to Title 22, section 4105, subsection 1.

CREDIT(S)

4 M. R. S. A. § 1802, ME ST T. 4 § 1802

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## Maine Revised Statutes Annotated Currentness

## Title 4. Judiciary

## Chapter 37. Maine Commission on Indigent Legal Services (Refs &amp; Annos)

## → § 1803. Commission structure

**1. Members; appointment; chair.** The commission consists of 5 members appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature. The Governor shall designate one member to serve as chair of the commission. One of the members must be appointed from a list of qualified potential appointees provided by the President of the Senate. One of the members must be appointed from a list of qualified appointees provided by the Speaker of the House of Representatives. One of the members must be appointed from a list of qualified potential appointees provided by the Chief Justice of the Supreme Judicial Court.

In determining the appointments and recommendations under this subsection, the Governor, the President of the Senate, the Speaker of the House of Representatives and the Chief Justice of the Supreme Judicial Court shall consider input from persons and organizations with an interest in the delivery of indigent legal services.

**2. Qualifications.** Individuals appointed to the commission must have demonstrated a commitment to quality representation for persons who are indigent and have the skills and knowledge required to ensure that quality of representation is provided in each area of law. No more than 3 members may be attorneys engaged in the active practice of law.

**3. Terms.** Members of the commission are appointed for terms of 3 years each, except that of those first appointed the Governor shall designate 2 whose terms are only one year, 2 whose terms are only 2 years and one whose term is 3 years. A member may not serve more than 2 consecutive 3-year terms plus any initial term of less than 3 years.

A member of the commission appointed to fill a vacancy occurring otherwise than by expiration of term is appointed only for the unexpired term of the member succeeded.

**4. Quorum.** Three members of the commission constitutes a quorum. A vacancy in the commission does not impair the power of the remaining members to exercise all the powers of the commission.

**5. Compensation.** Each member of the commission is eligible to be compensated as provided in Title 5, chapter 379. [FN1]

## CREDIT(S)

[FN1] 5 M.R.S.A. § 12001 et seq.

4 M. R. S. A. § 1803, ME ST T. 4 § 1803

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## Maine Revised Statutes Annotated Currentness

## Title 4. Judiciary

## Chapter 37. Maine Commission on Indigent Legal Services (Refs &amp; Annos)

## → § 1804. Commission responsibilities

**1. Executive director.** The commission shall hire an executive director. The executive director must have experience in the legal field, including, but not limited to, the provision of indigent legal services.

**2. Standards.** The commission shall develop standards governing the delivery of indigent legal services, including:

- A. Standards governing eligibility for indigent legal services;
- B. Standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel;
- C. Standards for assigned counsel and contract counsel case loads;
- D. Standards for the evaluation of assigned counsel and contract counsel;
- E. Standards for independent, quality and efficient representation of clients whose cases present conflicts of interest;
- F. Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel; and
- G. Other standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services.

**3. Duties.** The commission shall:

- A. Develop and maintain a system that uses appointed private attorneys, contracts with individual attorneys or groups of attorneys and consider other programs necessary to provide quality and efficient indigent legal services;
- B. Develop and maintain an assigned counsel voucher review and payment authorization system;

**C.** Establish processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and case load management systems so that detailed expenditure and case load data is accurately collected, recorded and reported;

**D.** Develop criminal defense, child protective and involuntary commitment representation training and evaluation programs for attorneys throughout the State to ensure an adequate pool of qualified attorneys;

**E.** Establish minimum qualifications to ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned, recognizing that quality representation in each of these types of cases requires counsel with experience and specialized training in that field;

**F.** Establish rates of compensation for assigned counsel;

**G.** Establish a method for accurately tracking and monitoring case loads of assigned counsel and contract counsel;

**H.** Submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system;

**I.** Approve and submit a biennial budget request to the Department of Administrative and Financial Services, Bureau of the Budget, including supplemental budget requests as necessary; and

**J.** Develop an administrative review and appeal process for attorneys who are aggrieved by a decision of the executive director, including but not limited to nonpayment of attorney vouchers, contract payments and the awarding of appointments or contracts.

**4. Powers.** The commission may:

**A.** Establish and maintain a principal office and other offices within the State as it considers necessary;

**B.** Meet and conduct business at any place within the State;

**C.** Use voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed;

**D.** Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, [FN1] except that rules adopted to establish standards under subsection 2, paragraph B are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A [FN1] and must be reviewed before final approval by the joint standing committee of the Le-

gislature having jurisdiction over judiciary matters; and

E. Appear in court and before other administrative bodies represented by its own attorneys.

CREDIT(S)

[FN1] 5 M.R.S.A. § 8071 et seq.

4 M. R. S. A. § 1804, ME ST T. 4 § 1804

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Maine Revised Statutes Annotated Currentness

Title 4. Judiciary

Chapter 37. Maine Commission on Indigent Legal Services (Refs & Annos)

→ § 1805. Executive director

The executive director of the commission hired pursuant to section 1804, subsection 1 shall:

- 1. Compliance with standards.** Ensure that the provision of indigent legal services complies with all constitutional, statutory and ethical standards;
- 2. Development of standards.** Assist the commission in developing standards for the delivery of adequate indigent legal services;
- 3. Delivery and supervision.** Administer and coordinate delivery of indigent legal services and supervise compliance with commission standards;
- 4. Most effective method of delivery.** Recommend to the commission the most effective method of the delivery of indigent legal services in furtherance of the commission's purposes;
- 5. Training for counsel.** Conduct regular training programs for counsel providing indigent legal services;
- 6. Personnel.** Subject to policies and procedures established by the commission, hire professional, technical and support personnel, including attorneys, considered reasonably necessary for the efficient delivery of indigent legal services;
- 7. Submissions to commission.** Prepare and submit to the commission:
  - A.** A proposed biennial budget for the provision of indigent legal services, including supplemental budget requests as necessary;
  - B.** An annual report containing pertinent data on the operation, needs and costs of the indigent legal services system; and
  - C.** Any other information as the commission may require;

**8. Develop and implement.** Coordinate the development and implementation of rules, policies, procedures, regulations and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards;

**9. Records.** Maintain proper records of all financial transactions related to the operation of the commission;

**10. Other funds.** Apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit or private grants, gifts or bequests;

**11. Meetings of commission.** Attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the executive director; and

**12. Other assigned duties.** Perform other duties as the commission may assign.

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4 M. R. S. A. § 1805, ME ST T. 4 § 1805

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# Notice of Agency Rule-making Proposal

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AGENCY: The Maine Commission on Indigent Legal Services

CHAPTER NUMBER AND TITLE: Chapter 2: Standards for Qualifications of Assigned Counsel

PROPOSED RULE NUMBER (*leave blank; assigned by Secretary of State*):

CONTACT PERSON FOR THIS FILING: Ron Schneider, Bernstein Shur, PO Box 9729, Portland, ME 04104, tel. 207-774-1200, fax. 207-774-1127, email: [rschneider@bssn.com](mailto:rschneider@bssn.com)

CONTACT PERSON FOR SMALL BUSINESS INFORMATION (if different):

PUBLIC HEARING (if any):

January 8, 2010, at 1:00 pm at Judiciary Committee Hearing Room, Room 438, Augusta, Maine

COMMENT DEADLINE: January 18, 2010

## BRIEF \*SUMMARY:

This rule is required by 4 M.R.S.A. § 1804(2)(B) and states the standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel to be eligible to accept appointments from the Commission on Indigent Legal Services to represent indigent people, who are eligible for a constitutionally-required attorney.

IMPACT ON MUNICIPALITIES OR COUNTIES (if any) --- None

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STATUTORY AUTHORITY FOR THIS RULE: 4 M.R.S.A. § 1804(2)(B)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (if different):

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: [rschneider@bssn.com](mailto:rschneider@bssn.com)

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\* Check one of the following two boxes.

☐ The above summary is for use in both the newspaper and website notices.

☐ The above summary is for the newspaper notice only. A more detailed summary / basis statement is attached.

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Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT \_\_\_\_\_ DATE: \_\_\_\_\_  
(authorized signature)

FUND	AGENCY	ORG	APP	JOB	OBJT	AMOUNT
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## Notice of Agency Rule-making Proposal

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### DETAILED BASIS STATEMENT / SUMMARY:

The Commission is required by its establishing statute, specifically 4 M.R.S.A. § 1804(2)(B), to create minimum standards prescribing minimum experience, training and other qualifications for contract and assigned counsel to be eligible to accept appointments to represent indigent people, who are eligible for a constitutionally-required attorney. The proposed rule establishes the standards prescribing minimum qualifications for attorneys to be able to accept assignments in general from the Commission on Indigent Legal Services to represent indigent people when the State is constitutionally required to provide counsel to those people. This proposed rule does not establish any standards for attorneys to be eligible to be assigned cases on specialized panels later established by the Commission. The proposed rule requires attorneys to submit an application and provides that they will not be assigned a case until they complete an application.

The proposed rule provides that in order to be eligible to receive assignments from the Commission in general, attorneys must be licensed to practice in Maine, must in good standing with the Maine State Board of Bar Overseers and must inform the Commission if any complaint against them to the Board of Bar Overseers has been set for a grievance panel hearing. Any attorney must also inform the Commission of a criminal conviction, a deferred disposition or a filing of any criminal charges.

The proposed rule requires attorneys to cooperate with the Commission's oversight of the attorneys on the list. Attorney must maintain an office or have use of space that allows them to have private and confidential communications with clients. The attorneys must have a telephone number and a confidential working electronic mail account.

The proposed rule provides for attorneys' experience and proficiency to be measured for the purpose of being minimally eligible in two ways. Attorneys must either take a commission-approved training program or must demonstrate a five-year commitment to and proficiency in the area of the law for which they are willing to accept appointments.

Attorneys must also complete 8 hours of continuing legal education approved by the Commission. Finally, attorneys must meet any specific training requirements of any specialized panels established by the Commission.

# Rule-Making Fact Sheet

(5 MRSA §8057-A)

AGENCY: The Maine Commission on Indigent Legal Services

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Ron Schneider, PO Box 9729, Portland, ME 04104, 207-774-1200

CHAPTER NUMBER AND RULE TITLE:

Chapter 2: Standards for Qualification of Assigned Counsel

STATUTORY AUTHORITY:

4 M.R.S.A. § 1804(2)(B)

DATE AND PLACE OF PUBLIC HEARING:

January 8, 2010, 1:00 pm, State House, Judiciary Committee Hearing Room, Room 438, Augusta, ME

COMMENT DEADLINE:

January 18, 2010

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

The Commission is required by the establishing statute, specifically 4 M.R.S.A. § 1804(2)(B), to create standards prescribing minimum experience, training and other qualifications for contract and assigned counsel to be eligible to accept appointments to represent indigent people, who are eligible for a constitutionally-required attorney.

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

The rule is expected to provide the Commission with a basis for determining which attorneys are minimally required to receive assignments to represent indigent people under the Commission's jurisdiction.

FISCAL IMPACT OF THE RULE:

There is no expected fiscal impact of this rule.

***FOR RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:***

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:

BENEFITS OF THE RULE:

*Note: If necessary, additional pages may be used.*

## MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**Chapter 2: STANDARDS FOR QUALIFICATIONS OF ASSIGNED COUNSEL**

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**Summary:** This chapter establishes the standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel to be eligible to accept appointments to represent indigent people, who are eligible for a constitutionally-required attorney.

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**1. Application**

All attorneys wishing to accept case assignments by the Commission must complete an application on in the manner prescribed by the Commission. The Commission will not act on an application until it is complete. No attorney will be assigned a case until that attorney completes an application.

**2. Minimum Experience, Training And Other Eligibility Requirements**

Any attorney wishing to accept case assignments from the Commission, serve as contract counsel or otherwise be approved by the Commission to accept assignments must satisfy the following conditions.

**1. Licensed To Practice**

The attorney must be licensed to practice law in the State of Maine. The attorney must be in good standing with the Maine Board of Bar Overseers and must promptly inform the Commission of a complaint against him or her before the Maine Board of Bar Overseers that has been set for a grievance panel hearing. The attorney must inform the Commission within 30 days of any criminal conviction or any other resolution of a criminal charge in any jurisdiction that is not an outright dismissal or acquittal, including but not limited to a deferred disposition pursuant 17-A M.R.S.A. § 1348-A or a Maine Rule of Criminal Procedure 11B filing of a criminal charge against the attorney.

**2. Attorney Cooperation with Procedures and Monitoring**

The attorney must register with the Commission annually in a manner prescribed by the Commission. The attorney must comply with all applicable Commission rules and procedures. The attorney must comply with monitoring, performance evaluations, and investigations of any complaints, including billing discrepancies, by the Commission or its designee.

### **3. Office, Telephone, and Electronic Mail**

The attorney must maintain an office or have the use of space that is reasonably accessible to the courts and clients and that permits the private discussion of confidential and other sensitive matters.

The attorney shall maintain a telephone number, which shall be staffed by personnel available for answering telephone calls or an answering service, an answering machine or voicemail capability that ensures client confidentiality.

The attorney must maintain a confidential working e-mail account as a means of receiving information from and providing information to the Commission.

The attorney must keep the Commission apprised of his or her work telephone number and postal and electronic mail addresses.

### **4. Experience and Proficiency**

The attorney shall demonstrate the necessary and sufficient experience and proficiency required to accept appointments as provided below.

- A. For the first year of the Commission's operation, which is July 1, 2010 to June 30, 2011, if the attorney has been assigned cases by the judicial branch prior to July 1, 2010, the attorney must satisfactorily complete a Commission-approved training course for the area of the law for which the attorney is willing to accept appointments, i.e., criminal defense, juvenile defense, civil commitment or child protective, within 12 months of first assignments from the Commission; or
- B. After the first year of the Commission's operation, any attorney not previously having been accepted to receive appointments from the Commission must satisfactorily complete a Commission-sponsored or Commission-approved training course for the area of the law for which the attorney is willing to accept appointments, i.e., criminal defense, juvenile defense, civil commitment or child protective, prior to accepting assignments; or
- C. An attorney may be accepted to receive assignments from the Commission without completing a Commission-sponsored or Commission-approved training course as provided above if the attorney demonstrates to the Commission a commitment to and proficiency in the practice of the area of the law for which the Attorney is willing to accept appointments over the course of at least the five years prior to receiving appointments from the Commission.

### **5. Training**

The attorney shall annually complete 8 hours of CLE approved by the Commission.

The attorney shall meet any specific training requirements of any specialized panels (Homicide, Child Protective, Involuntary Commitment, etc.) as is required by those panels.

AUTHORITY: 4 M.R.S.A. § 1804(2)(B)

**Maine Commission on Indigent Legal Services**  
**APPLICATION FOR INDIGENT CASE ASSIGNMENTS**

*Please submit information to:*  
Maine Commission on Indigent Legal Services  
c/o John Pelletier, Esq., Executive Director

---

*Counties in which assignments are desired:*

---

*Interest in assignments for:*

<input type="checkbox"/> Murder	<input type="checkbox"/> Operating Under the Influence
<input type="checkbox"/> Sex Offenses Involving Children	<input type="checkbox"/> Domestic Violence
<input type="checkbox"/> Gross Sexual Assault	<input type="checkbox"/> Drug Offense
<input type="checkbox"/> Other Felonies	<input type="checkbox"/> Other Misdemeanors
<input type="checkbox"/> Juvenile Defense	<input type="checkbox"/> Civil Commitments
<input type="checkbox"/> Child Protective	<input type="checkbox"/> Emancipation
<input type="checkbox"/> NCR Release Hearings	<input type="checkbox"/> Other: _____

---

Name: \_\_\_\_\_

Law Firm: \_\_\_\_\_

Office Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email Address: \_\_\_\_\_

Cell Phone: \_\_\_\_\_

Home Address: \_\_\_\_\_

ME Bar Number: \_\_\_\_\_ Date of Admission to ME Bar: \_\_\_\_\_

Law School(s) & Date of Graduation: \_\_\_\_\_

---

**PLEASE ATTACH SHEETS AS NEEDED:**

1. Resume describing education and employment history.
2. As an attorney, have you ever been disbarred, suspended, reprimanded, censured, or otherwise formally disciplined, publicly or privately? \_\_\_\_ yes \_\_\_\_ no If yes, please explain.
3. Have you ever been convicted of a crime or subject to a criminal charge in any jurisdiction that resulted in any resolution other than an outright dismissal? Outright dismissal does not include a dismissal resulting from a deferred disposition pursuant to 17-A M.R.S.A. § 1348-A or a filing pursuant to M.R. Crim. P. 11B or a dismissal resulting from any substantially similar procedures in Maine or in another jurisdiction. \_\_\_\_ yes \_\_\_\_ no If yes, please explain.
4. Do you maintain an office or have the use of space that is reasonably accessible to the courts and clients and that permits the private discussion of confidential and other sensitive matters? \_\_\_\_ yes \_\_\_\_ no If yes, please explain.
5. Do you maintain a telephone number staffed by personnel available for answering telephone calls or an answering service, answering machine, or voicemail that ensures client confidentiality? \_\_\_\_ yes \_\_\_\_ no
6. Have you been assigned a case as counsel for an indigent defendant or juvenile or as counsel to an indigent party in a civil case prior to July 1, 2010? \_\_\_\_ yes \_\_\_\_ no
7. Have you satisfactorily completed a Commission-sponsored or Commission-approved training course for the area(s) of law in which you are seeking to receive appointments? \_\_\_\_ yes \_\_\_\_ no If yes, please identify the training by date, location, and subject.
8. If your answers to questions 6 and 7 are no, do you wish to be exempted from the Commission training requirement on the basis of commitment to and proficiency in the practice area(s) for which you are seeking appointments? \_\_\_\_ yes \_\_\_\_ no If yes, please set forth in detail your experience representing clients in the relevant practice area(s) over the course of at least the last five years. Include specific trial experience, the portion of your practice devoted to such representation, and any other information demonstrating your commitment to and proficiency in such practice area(s).

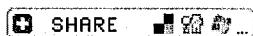
I hereby certify that the above information is true and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

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12/31/09 | 12 comments



## Panel opposes cuts to legal aid for poor

By Mal Leary  
Capitol News Service

AUGUSTA, Maine — Members of the newly created Commission on Indigent Legal Services are opposing Gov. John Baldacci's proposal to cut their budget by \$457,990 in their first year of operation, but the governor says their fears are unwarranted.

"We are already behind the eight ball and putting us further behind the eight ball is not a good idea," Portland lawyer Ron Schneider, chairman of the commission, said Tuesday at a meeting of the panel.

The commission was created earlier this year as an independent agency to oversee payments to lawyers to defend Mainers who cannot afford to pay for their own attorney. The judicial branch now handles both the appointment of the lawyers and the process that determines how much they are paid, a situation that many lawmakers felt put the judges in a difficult role.

Schneider and the others on the five-member panel believe the true costs of operating the indigent legal services system are masked by its integration into the court system. The panel was appropriated \$262,784 this budget year to get started and on July 1, 2010, will become fully operational with a budget of \$10,826,738.

"They didn't fully account for things like rent and phones and computers," Schneider said. "Those had been just part of the court budget."

Most of the cost of the system is payments for lawyers representing indigent Mainers. The budget allows 10 administrative positions to operate the system starting in July. Some positions are being transferred from the courts; others will be filled later in the year.

Commission members are worried that as a new, small agency, they will have difficulty in reaching lawmakers to express their concerns.

"We have to do more than just show up to the hearings and testify to get our message out," said Sally Sutton, a commission member who works as a policy analyst at the University of Southern Maine. "Everybody is being cut and we have to plan how we are going to lobby on this."

Other panel members agreed. Kim Moody, executive director of the Disability Rights Center, said the budget cut package of \$438 million is hitting just about everybody, and as a new agency, it will be a struggle to make their arguments heard.

"The difficulty we are going to face is that we are probably an accounting error in this supplemental budget; \$450,000 is not a whole lot," Schneider said. "But, we are one of the few expenditures that is absolutely required. If the state wants to put people in jail, they need to provide that person with a lawyer."

And that constitutional requirement is why Baldacci says the commission really should not worry. In an interview Wednesday, the governor said if the

commission runs short of cash, he will submit a request for additional funding for the 2011 budget year to the Legislature.

"This is something that has to be done, but this is the best estimate we have from the courts on what is needed. That's what's in the budget," he said.

Baldacci said every state agency needs to find better and more efficient ways to do their jobs through consolidation and "thinking outside the box." He said as a new agency the commission has opportunities existing agencies may not have to implement new ideas.

Schneider, in an interview after Tuesday's meeting, stressed the commission has a lot to do in the months ahead with both court rules and state laws needing changes as the new system is implemented. He said the panel is seeking to make the new system more efficient and hopefully more effective.

"We will have it up and running July 1," he said. "We have an RFP [request for proposal] out for a Web-based system for the lawyers to log in and file their bills electronically, eliminating the paper forms used now."

Schneider said the commission plans to hold a public hearing for lawyers and others interested in the development of the new system. Members also plan to attend the budget hearing before the legislature's Appropriations Committee on Jan. 8 to oppose the cut in their budget.


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## Proposal to Crack Down on Check Bouncers Draws Fire

01/22/2010 Reported By: Susan Sharon

One district attorney says the writing of bad checks has become a widespread problem that is hurting Maine retailers and costing the state lost revenue as well. To try to prevent the most serious scofflaws from ripping off merchants, Rep. Michael Shaw of Standish is proposing to increase penalties for negotiating worthless instruments. But critics say it will only shift the burden to cash-strapped courts and overcrowded jails.

### Related Media

**Proposal to Crack Down on Check Bouncers Draws Fire**  
Originally Aired: 1/22/2010 5:30 PM

[Listen](#)  
Duration:  
3:34

No one knows for sure how much bad checks are costing the state and local businesses, but one southern Maine retailer estimates he's lost close to \$70,000 in the past three years.

He shared his experience with members of the Legislature's Criminal Justice and Public Safety Committee. "And these people have no intention of paying. And it probably winds up being four or five grand in income taxes that you guys aren't going to get from me because that comes off my bottom line," Dana Lampron said.

Lampron owns a convenience store and heating oil business called Pit Stop Fuels. He says he's implemented a policy that requires first-time customers to pay by credit card, cash or money order. He says that has curbed the the problem but it hasn't ended it.

He says he doesn't want to ban checks completely because so many older customers rely on them. His dilemma is that, like other merchants, Lampron still has to pay the sales tax on his products every month whether he gets paid or not.

"And what we're doing is we're supporting the crooks, cause they're laughing at you. They're thumbing their nose at the system because they refuse to cooperate."

In Cumberland County where he lives, Lampron says bad checks are sent to the district attorney's office and then referred to a collection agency. But Lampron estimates that he only recovers about 10 percent of what's owed him.

And he says he's been advised that anything under \$500 isn't prosecuted. "It's another welfare system, you know, on the backs of business and honest people that are already paying their taxes for all the other welfare systems we have in this state."

Enter state Rep. Michael Shaw with a proposed solution: Boost the penalties for writing bad checks. For example, he suggests that a bad check of \$500 or more be made a felony and that those convicted pay triple damages as well as court costs and attorney fees.

Jack Comart, an attorney for Maine Equal Justice, a low-income advocacy group, says requiring people to spend more time in jail for writing \$500 worth of bouncing checks is the wrong solution.


"The bill makes no distinction between those who, through no fault of their own, are not able to tender the amount of the check and fees within ten days," Comart said. "We often deal with people living on fixed incomes such as social security, SSI and TANFF and many times they don't get their direct deposit check through no fault of their own but through a bureaucratic mixup."

Comart says if a person on SSI writes a \$500 check for their rent and then doesn't get paid before that

check bounces, the penalty proposed in Shaw's bill seems excessive. In addition, Comart says it will cost the state to house offenders in jail.

And, says John Pelletier, executive director of the Maine Commission on Indigent Legal Services, it will cost the state more in court-appointed attorneys fees by converting certain crimes to felonies. "Right now with respect to misdemeanors, class D and E crimes, if someone is charged with one of those crimes they're not entitled to court-appointed counsel unless the district attorney is looking for jail. But if the person is charged with a felony they are entitled to court-appointed counsel and if they're indigent they'll receive court-appointed counsel."

In addition, Pelletier says research shows that when low-risk offenders are subjected to stiff sanctions for behavior that is an anomaly they can become high risk offenders. He says making bad check writers pay simple restitution to merchants is probably a more effective sentence. Others say uniform enforcement by district attorneys across the state could also help.

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